

EXHIBIT

10

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

3 IN RE: NATIONAL PRESCRIPTION)
OPIATE LITIGATION)
4)
THIS DOCUMENT RELATES TO) MDL NO. 2804
5) CASE NO. 17-MD-2804
6 TRACK NINE)
)

8 ORAL AND VIDEOTAPED DEPOSITION OF
9 SCOTT JOHNSON
JULY 12, 2023

11 HIGHLY CONFIDENTIAL - SUBJECT TO
12 FURTHER CONFIDENTIALITY REVIEW

14 DEPOSITION OF SCOTT JOHNSON, produced as a
15 witness at the instance of the Plaintiffs, and duly sworn,
16 was taken in the above-styled and numbered cause on the
17 12th day of July 2023, from 10:00 a.m. to 12:02 p.m.,
18 before Kate E. Roundy, RPR, in and for the State of
19 Arizona, reported by machine shorthand, at the offices of
20 Greenberg Traurig, LLP, 2375 East Camelback Road, Suite
21 800, Phoenix, Arizona, pursuant to the Federal Rules of
22 Civil Procedure and the provisions stated on the record or
23 attached hereto.

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22 Corey Palumbo, Kroger (Via Zoom)

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24

25

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P R O C E E D I N G S

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3 THE VIDEOGRAPHER: We are now on the record. My
4 name is Dan Lawlor. I'm the videographer representing
5 Golkow Litigation Services.

6 Today's date is July 12th, 2023, and the time is
7 10:00 a.m.

8 This video deposition is being held in Phoenix,
9 Arizona, in the matter of Opiate Litigation, Track Nine,
10 Cause No. 17-MD-2804.

11 The deponent is Scott Johnson.

12 Counsel, please identify yourselves for the
13 record.

14 MR. LICHTER: Good morning. My name is
15 Jay Lichter for plaintiff, Tarrant County, Texas.

16 MS. MILLER: Gretchen Miller on behalf of
17 Defendant Albertsons.

18 THE VIDEOGRAPHER: And, counsel on Zoom, would
19 you like to identify yourselves?

20 MR. PALUMBO: This is Corey Palumbo. I represent
21 Kroger.

22 MR. SMITH: We have two more that just joined.

23 THE VIDEOGRAPHER: And, counsel on Zoom, we are
24 identifying counsel for the record. If you would like to
25 identify, please do.

1 MR. JANUSH: Evan Janush here, Lanier Law Firm,
2 on behalf of plaintiff Tarrant County.

3 THE VIDEOGRAPHER: And other counsel will be
4 noted on stenographic record.

5 The court reporter is Kate Roundy and will now
6 swear in the witness.

7

8 SCOTT JOHNSON,
9 called as a witness herein, having been first duly sworn
10 by the Certified Court Reporter, was examined and
11 testified as follows:

12 THE WITNESS: I do.

13 THE COURT REPORTER: Thank you.

14 THE VIDEOGRAPHER: Please proceed.

15

16 EXAMINATION

17 BY MR. LICHTER:

18 Q. Okay. Good morning, Mr. Johnson.

19 Will you please state and spell your name for the
20 record?

21 A. Scott, S-c-o-t-t, Johnson, J-o-h-n-s-o-n.

22 Q. And have you ever had your deposition taken
23 before?

24 A. Yes.

25 Q. About how many times?

1 A. Several.

2 Q. Can you give me an estimate of how many times?

3 A. At least six.

4 Q. At least six.

5 And for -- can you walk me through each of those
6 six and give me just kind of the general overview of what
7 each one was about?

8 A. All were about antitrust cases.

9 Q. Okay. And was your role in each of them as a
10 witness or as a party?

11 A. Witness.

12 Q. Okay. You've never been a party to a lawsuit?

13 A. No.

14 Q. Did you serve as an expert witness in those
15 cases?

16 A. No.

17 Q. Were any of those cases involving Albertsons?

18 A. Yes.

19 Q. How many of those?

20 A. Most all were to my knowledge.

21 Q. And when was the last one you were involved in?

22 A. I don't recall the year. I left Albertsons in
23 2020, so it was prior to that.

24 Q. Do you have an estimate about when that may have
25 been?

1 A. I don't recall.

2 Q. Okay. So you may already be familiar with some
3 of the admonitions that witnesses usually get prior to a
4 deposition. I just want to go through a couple -- a
5 couple of those right now.

6 Throughout the deposition, your counsel,
7 Ms. Miller, may object to questions as I ask them. Just
8 so you know, unless she specifically directs you not to
9 answer, you're obligated to answer the questions to the
10 best of your ability.

11 Do you understand that?

12 A. Yes.

13 Q. Okay. And, obviously, we have a court reporter
14 here taking down everything we're saying, so it's
15 important for us not to talk over each other.

16 So to the extent you can, wait for me to complete
17 asking my question before you provide a response. That's
18 the best course of action here.

19 Do you understand that?

20 A. Yes.

21 Q. Okay. And also, responses to some questions may
22 be yes or no. I would ask you to try to avoid saying
23 uh-huh or huh-uh, just because it's difficult for the
24 court reporter to take that down or discern what's
25 actually being said.

1 Does that make sense?

2 A. Yes.

3 Q. Are you taking any medications currently that may
4 impact your ability to give truthful testimony?

5 A. No.

6 Q. Okay. And we'll probably be taking breaks
7 throughout this deposition. I'm going to shoot for taking
8 a small maybe a restroom break every hour or so. If at
9 any time during the deposition you would like to take a
10 break for any reason, feel free to let me know and unless
11 a question is pending, we'll -- we'll go ahead and take
12 that break. Is that okay?

13 A. Yes.

14 Q. Okay. And what have you done to prepare for
15 today's deposition?

16 A. I have spent time with counsel on several
17 occasions.

18 Q. Okay. And which counsel?

19 A. Gretchen Miller.

20 Q. Anyone else?

21 A. I don't recall the other names of the group.

22 Q. Do you know about how many times you met with
23 counsel?

24 A. I met with counsel I believe three times.

25 Q. Okay. Over the course of how long?

1 A. Over the course of approximately four months.

2 Q. Have you reviewed any documents to prepare for
3 today's deposition?

4 A. I did see a couple documents from -- from
5 Gretchen, yes.

6 Q. Do you remember what those documents were?

7 MS. MILLER: I'm going to object to the extent
8 that that calls for privileged or attorney work product.

9 MR. LICHTER: Instructing him not to answer?

10 MS. MILLER: I'm instructing him not to answer,
11 yes.

12 MR. LICHTER: I'm going to go ahead and have the
13 first document marked as Exhibit 1.

14 (Exhibit 1 was marked for identification.)

15 BY MR. LICHTER:

16 Q. Okay. Have you seen this document before?

17 A. Yes.

18 Q. Okay. Other than -- well, what is this document?

19 A. Looks like a LinkedIn profile.

20 Q. Okay. And other than the redactions I made to
21 this document on pages 3 through 6, is this a current copy
22 of your online LinkedIn profile?

23 A. Yes.

24 Q. Okay. Did you prepare the information here in
25 the profile?

1 A. Yes.

2 Q. Is the information in here accurate?

3 A. Yes.

4 Q. Okay. Let's take a look at page 2 under the
5 section marked "Education."

6 Do you see that?

7 A. Yes.

8 Q. It says here you received a BS in pharmacy from
9 North Dakota State University; is that correct?

10 A. Yes.

11 Q. And what year was that?

12 A. 1983.

13 Q. Okay. And you received an MS in pharmacy from
14 North Dakota State University; correct?

15 A. Yes.

16 Q. And what year was that?

17 A. 1986.

18 Q. And you received an MBA from Keller Graduate
19 School of Management of DeVry University; correct?

20 A. Yes.

21 Q. And what year was that?

22 A. I don't recall the year.

23 Q. Okay. Do you have an estimate about when that
24 may have been? Was that within the last ten years?

25 A. I would say late 1990s.

1 Q. And have -- have you received any other formal
2 education after high school that is not listed here?

3 A. No.

4 Q. Have you received any other degrees that aren't
5 listed here?

6 A. No.

7 Q. Do you have any current licenses or
8 certifications?

9 A. Yes.

10 Q. And what are those?

11 A. I'm a licensed pharmacist in Arizona. I'm a
12 licensed pharmacist in North Dakota.

13 Q. Any other states?

14 A. No.

15 Q. Any other licenses or certifications?

16 A. No.

17 Q. And what year did you receive your license for
18 both of those states?

19 A. 1975, for North Dakota. 19- -- approximately
20 1990 for Arizona. I'm not exactly positive.

21 Q. And your work history section is on pages 1 to 2
22 marked "Experience."

23 Do you see that?

24 A. Yes.

25 Q. Okay. And the information here begins at 2002;

1 is that right?

2 A. Yes.

3 Q. Okay. Did you maintain any employment prior to
4 2002?

5 A. Yes.

6 Q. And where was that?

7 A. With Albertsons or companies that were purchased
8 by Albertsons.

9 Q. When did you first begin working for Albertsons
10 or companies purchased by Albertsons?

11 A. July 1986.

12 Q. And what position was that?

13 A. Pharmacy intern.

14 Q. And what was your position after that?

15 A. Pharmacist.

16 Q. And what year?

17 A. 1987.

18 Q. And for '86 and '87, do you remember what company
19 you were working for?

20 A. Sav-on drug.

21 Q. How about after '87?

22 A. I was a pharmacy manager.

23 Q. For what company?

24 A. Sav-on drug.

25 Q. For how many years?

1 A. Approximately eight.

2 Q. Okay. And after you were a pharmacy manager?

3 A. I was a pharmacy trainer.

4 Q. What year did you start as a pharmacy trainer?

5 A. 1994.

6 Q. And was that still for Sav-on?

7 A. It was a corporate position.

8 Q. Okay. For what company?

9 A. Sav-on.

10 Q. And after that?

11 A. I was a regional pharmacy manager.

12 Q. For what years?

13 A. Approximately 1994 to 2002.

14 Q. And that was still for Sav-on?

15 A. It was for Sav-on and if we were purchased, it
16 might have been Albertsons. I don't recall.

17 Q. As a regional pharmacy manager between '94 and
18 2002, what was the geographic area that you oversaw?

19 A. Part of that time frame I had some southern
20 California locations, pharmacies. And I also had
21 locations -- once I relocated to Arizona, I had locations
22 in the state of Arizona.

23 Q. And about how many locations did you oversee?

24 A. Approximately 60.

25 Q. And then, I guess according to the LinkedIn

1 profile here, it says from 2002 to 2003 you were the
2 generic category manager at Albertsons; is that right?

3 A. Yes.

4 Q. And can you summarize your main duties and
5 responsibilities in that role?

6 A. To interact with generic pharmaceutical companies
7 reviewing their products, seeing if they matched up with
8 our need for our company.

9 Q. Did any of your duties in this role involve
10 Albertsons' suspicious order monitoring?

11 A. No.

12 Q. Okay. And from 2003 to 2013, you were the
13 Albertsons director of pharmacy and general manager of
14 procurement; is that right?

15 A. Yes.

16 Q. And that was in the Boise, Idaho, area; correct?

17 A. That was where the corporate office was.

18 Q. Where were you located at the time?

19 A. In Arizona.

20 Q. Okay. And can you summarize your main duties and
21 responsibilities in this role?

22 A. My primary responsibility to interact with our
23 primary wholesaler of contract, as well as any brand or
24 generic manufacturers as far as product selection to help
25 with our stores.

1 Q. So you had a role in helping to select which
2 actual medications Albertsons would receive from
3 wholesalers; is that accurate?

4 A. No. It would be selection of products we would
5 want to warehouse.

6 Q. Okay. And did any of your duties in this
7 position involve suspicious order monitoring?

8 A. I don't believe so. I don't recall when we
9 started working on that, to be honest with you, the time
10 frame.

11 Q. Okay.

12 A. But...

13 Q. And then the printout for some reason cuts this
14 off a bit, but it says from 2013 to 2020 you were
15 Albertsons' group director of prescription procurement; is
16 that right?

17 A. Yes.

18 Q. Okay. And what were your main duties and
19 responsibilities in that role?

20 A. I expanded responsibility not only for brand
21 contracting, generic contracting, as well as primary
22 wholesaler agreement, responsibility for purchasing in the
23 contract for immunizations, blood pressure machines.
24 Whatever else I was asked to work on.

25 Q. And were you located in Arizona during this time?

1 A. I relocated to Boise in 1995, I believe. No,
2 that's not correct. I apologize.

3 2015. I'm sorry.

4 Q. And why did you relocate to Boise in 2015?

5 A. They closed the office in Arizona and I was given
6 a choice to relocate to Idaho.

7 Q. And did your -- did any of your duties in this
8 position involve suspicious order monitoring?

9 A. I was involved with the Ponca warehouse committee
10 that was formed for compliance, yes.

11 Q. So all of your duties relating to suspicious
12 order monitoring were through the Ponca committee on
13 compliance?

14 A. Yes.

15 Q. Do you know what that committee was officially
16 called?

17 A. I don't recall.

18 Q. Do you know when you first joined that committee?

19 A. I don't recall.

20 Q. Do you have an estimate as to when that may have
21 been?

22 A. No.

23 Q. Would that have coincided with your job as group
24 director of prescription procurement?

25 A. Yes.

1 Q. Okay. So for the entire duration as a group
2 director of prescription procurement, you would have been
3 a member of the committee?

4 A. Whenever the committee was formed. And I don't
5 know the exact time frame the committee was formed.

6 Q. Okay. Would you have been on the committee
7 between 2003 and 2013 in your role as director of pharmacy
8 and --

9 A. If there was such a committee, yes.

10 Q. Okay.

11 A. And if there was Ponca warehouse was open, yes.

12 Q. So you don't remember what role you were in at
13 the time when you first joined the committee?

14 A. I was part -- committee member.

15 Q. You don't remember what your job title was at the
16 time you first joined the committee?

17 A. Group director of pharmacy procurement.

18 Q. Okay. And you left Albertsons in 2020?

19 A. Yes.

20 Q. And why did you leave?

21 A. To seek other employment.

22 Q. Did you quit your position at Albertsons?

23 A. Yes.

24 Q. And did you quit as a result of any -- any issues
25 with the company of Albertsons itself?

1 A. No.

2 Q. And so I guess you found employment in September
3 2020 as the director of Contracting Solutions at Econdisc,
4 LLC; is that right?

5 A. Yes.

6 Q. Is that your current position?

7 A. No.

8 Q. What's your current position?

9 A. Associate general manager Contracting Solutions
10 at Econdisc --

11 THE COURT REPORTER: Slow down. Associate
12 general manager --

13 THE WITNESS: General manager, Contracting
14 Solutions at Econdisc, LLC.

15 BY MR. LICHTER:

16 Q. And what type -- type of company is Econdisc,
17 LLC?

18 A. Econdisc is a group purchasing organization.

19 Q. Is that for pharmaceuticals?

20 A. It is for generic pharmaceuticals, yes.

21 Q. And when you were the director of Contracting
22 Solutions, can you summarize your main duties and
23 responsibilities in that role?

24 A. Main duties, I had approximately 45 suppliers
25 that I would direct and daily contact with on products

1 that they were willing to sell us or supply issues. So
2 day-to-day operations for the -- the company.

3 Q. So did you -- strike that.

4 Would Econdisc facilitate groups of pharmacies
5 receiving pharmaceuticals?

6 A. Econdisc would contract with generic
7 pharmaceuticals on behalf of all their participants. We
8 would not purchase any products.

9 Q. And those participants would be pharmacies?

10 A. It would be companies that owned pharmacies.
11 Yes.

12 Q. Okay. Do you know if Albertsons is one of those
13 companies?

14 A. For a time period, yes, they were. Not today.

15 Q. Do you know when they stopped?

16 A. Approximately 2018. 2017. I'm not exactly
17 positive.

18 Q. And do you have any sources of income other than
19 from Econdisc, LLC, today?

20 A. Can you be more specific, please? Sources of
21 income.

22 Q. Yeah. Do you receive money in any way, shape, or
23 form from any -- from any work you do other than for
24 Econdisc?

25 A. For work I have done, no.

1 Q. Do you receive other sources of income from
2 anything else?

3 A. Yes.

4 Q. From what?

5 A. I have an Albertsons Legacy Fidelity account that
6 I get a distribution from on the cadence of years.

7 Q. Anything else?

8 A. No.

9 Q. And at page 1 under your picture here on the
10 LinkedIn profile, couple lines down, it says Boise, Idaho,
11 United States.

12 Is that where you currently reside?

13 A. No.

14 Q. Where do you currently reside?

15 A. Chandler, Arizona.

16 Q. Okay. How long have you been there?

17 A. December 2022.

18 Q. We can set this one aside.

19 And do you have a general familiarity with
20 Albertsons' history of self-distributing medications to
21 its pharmacies?

22 A. Yes.

23 Q. Okay. Are you aware that at certain times
24 Albertsons distributed opioids to its pharmacies from its
25 distribution center in Ponca City, Oklahoma?

1 A. Yes.

2 Q. And that would have included distributions into
3 Texas; correct?

4 A. I don't recall. Yes, I would -- if we owned
5 stores in Texas, yes, I do believe Albertsons did own
6 stores, yes.

7 Q. Okay. And that would also included distribution
8 into Tarrant County, Texas, correct, provided Albertsons
9 had stores there?

10 A. Yes.

11 Q. Okay. Do you know if Albertsons ever have any
12 pharmacies in Tarrant County, Texas?

13 A. I do not, no.

14 Q. Are you aware that Albertsons distributed opioids
15 from that distribution center between 2006 and 2008?

16 A. If that distribution center was servicing
17 pharmacies, yes. I don't recall the exact dates.

18 Q. Okay. Are you aware that during this
19 2006-to-2008 time period it distributed Schedule III, IV
20 and V drugs to its pharmacies?

21 A. If Ponca City was open and distributing, yes.

22 Q. Okay. And are you aware that during this time
23 Albertsons was not distributing Schedule II drugs to its
24 pharmacies?

25 A. I don't recall when they built that vault. So I

1 don't know the answer to that.

2 Q. Okay. Are you aware that during the 2009-to-2012
3 time period Albertsons stopped distributing drugs from its
4 distribution center all together?

5 A. That seems relatively accurate, yes.

6 Q. Okay. Do you know why it stopped?

7 A. I don't know the -- I don't recall the exact
8 reason why it stopped. It may have had to do with
9 sourcing from a different source.

10 Q. Do you recall any -- any other information on
11 that point, any general explanations as to why?

12 A. It was a business decision by Albertsons to close
13 it.

14 Q. Are you aware that from 2013 to 2016 Albertsons
15 again distributed opioids to its pharmacies from its Ponca
16 City distribution center?

17 A. Yes.

18 Q. Do you know why it started -- why it chose to
19 start distributing again in 2013?

20 A. Albertsons contracted with Econdisc Contracting
21 Solutions. One of their requirements was to be able to
22 warehouse generic pharmaceuticals.

23 Q. And it contracted with Econdisc in 2013?

24 A. Yes, approximately. Correct.

25 Q. Okay. And as a condition of distributing again,

1 Econdisc required Albertsons -- sorry -- strike that.

2 Are you aware that during the 2013-to-2016 time
3 period Albertsons distributed Schedule II, III, IV and V
4 drugs?

5 A. Yes.

6 Q. Okay. Do you know why it chose to distribute
7 Schedule II drugs during this time?

8 A. Yes. The primary reason was it was a better
9 source of supply to buy direct from manufacturers to help
10 pharmacies and patients.

11 Q. Do you remember what that source of supply was?

12 A. We would purchase direct from the manufacturer.

13 Q. Do you remember who that manufacturer was?

14 A. There were several.

15 Q. Do you remember who they were?

16 A. There were -- whoever we contracted with for
17 controlled substances in -- and the movement warranted
18 that we would warehouse that in Ponca, we would.

19 Q. But you --

20 Sorry.

21 A. There were many.

22 Q. Okay. About how many?

23 A. I do not remember.

24 Q. Okay. Are you aware that in 2016 Albertsons
25 again stopped distributing drugs from its distribution

1 center?

2 A. Yes.

3 Q. Did it stop distributing all drugs?

4 A. All prescription drugs, yes.

5 Q. Do you know why it stopped in 2016?

6 A. Business decision to close the warehouse and move
7 to a hundred percent DSD purchasing model with the
8 wholesaler.

9 Q. And what does DSD stand for?

10 A. Direct store delivery.

11 Q. Do you remember who made that business decision?

12 A. At the highest level of the organization.

13 Q. You don't know specifically who?

14 A. I would assume Mr. Miller.

15 Q. And Mr. Miller is?

16 A. Was the CEO.

17 Q. Are you aware that while Albertsons was
18 self-distributing drugs, the warehouse would ship orders
19 the same day they were received?

20 A. If it made sense for their routes, yes.

21 Q. Can you explain that a little bit?

22 A. If there was product received as an order that
23 could make a truck going to a location to be driven, yes.

24 Some locations had to be UPS-shipped. So

25 depending on when the order came in, it would go out the

1 same day or the next day.

2 Q. So other than for reasons of route efficiencies,
3 Albertsons typically shipped orders the same day they were
4 received; correct?

5 A. Yes.

6 Q. And I think we've used this phrase already a few
7 times in this deposition, but prior to this deposition,
8 have you heard the phrase "suspicious order monitoring
9 system" or "SOMS," S-O-M-S?

10 A. Yes.

11 Q. And what do you understand that to mean?

12 A. Suspicious order monitoring was designed, I
13 believe, by the drug enforcement administration that
14 required registrants, if they were distributing product,
15 to have certain processes in place for that distribution.

16 Q. Do you recall when it was the first time you
17 learned about suspicious order monitoring systems?

18 A. No, I don't.

19 Q. Do you recall generally when in your career that
20 may have been?

21 A. I don't recall.

22 Q. Do you know when Albertsons first implemented a
23 SOMS?

24 A. I don't recall.

25 Q. You don't have any sort of estimate as to when

1 that may have been?

2 A. Well, it would have been when they had controlled
3 substances probably in their distribution center.

4 Q. So for all times Albertsons self-distributed
5 prescription drugs, is it your testimony that they had a
6 suspicious order monitoring system in place?

7 A. No.

8 Q. And why not? What -- for what period of time
9 would they not have had one in place?

10 A. I don't know the exact time frame where they
11 went -- started or did start. I don't know.

12 Q. So is it your testimony that for a period of time
13 they were self-distributing drugs but did not have a
14 suspicious order monitoring system in place?

15 MS. MILLER: Object to form. Misstates
16 testimony.

17 THE WITNESS: Yeah, I didn't -- I didn't state
18 that. I said there was a time period in that 2013 time
19 frame that they had a suspicious order monitoring
20 discussions.

21 BY MR. LICHTER:

22 Q. So let me ask it this way.

23 There was ever a time period where Albertsons was
24 self-distributing prescription drugs where it did not have
25 a suspicious order monitoring system in place?

1 A. I don't recall.

2 Q. Do you recall whether Albertsons had a suspicious
3 order monitoring system in place in the 2006-to-2008 time
4 frame that was self-distributing?

5 A. I don't recall.

6 Q. So would that mean you wouldn't be familiar with
7 any of the details as to how a SOMS system may have
8 operated in the 2006-to-2008 time frame?

9 A. I don't recall that.

10 Q. Anything in the area of pre- -- prewarehouse,
11 warehouse or postwarehouse SOMS system between 2006 or
12 2008, you wouldn't have any information as to how that may
13 have operated?

14 A. I do not.

15 Q. Okay. That saves us some questions, then.

16 How about for the 2013-to-2016 time period? Do
17 you know whether Albertsons had a SOMS in place in the
18 2013-to-2016 time frame?

19 A. I would say, yes, sometime in there. I don't
20 know the exact time frame.

21 Q. And are you familiar with any of the details as
22 to how the SOMS system operated in the 2013-to-2016 time
23 frame?

24 A. Not very well, no.

25 Q. But you have some knowledge of -- of how that

1 operated?

2 A. Yes.

3 Q. Okay. How about for this 2013-to-2016 time
4 frame, do you know if Albertsons SOMS played any role
5 before a pharmacy order for opioids reached the
6 distribution center?

7 MS. MILLER: Object to form.

8 THE WITNESS: Would you repeat that, please?

9 BY MR. LICHTER:

10 Q. Sure.

11 For this 2013-to-2016 time frame, do you know if
12 the SOMS played any role before a pharmacy order for
13 opioids reached the distribution center?

14 A. I don't know.

15 Q. How about at the warehouse itself? For this
16 2013-to-2016 time frame, do you know if Albertsons' SOMS
17 played any role in the Ponca City warehouse?

18 A. I don't know exactly the time frame. The SOMS
19 that would be from Ponca City to the pharmacies
20 themselves.

21 Q. Can you explain, I guess, your knowledge of how
22 SOMS played a role in that process?

23 A. Part of the SOMS was for the distribution side of
24 the business to be able to have good monitoring system of
25 product that is moving from the Ponca warehouse to their

1 pharmacies.

2 Q. Do you recall any of the details about how the
3 monitoring system worked in any capacity?

4 A. That would be a Ponca question. Ponca folks. I
5 don't know the answer to that.

6 Q. Okay. And you said you didn't know if there was
7 a SOMS program in place that was actually at the warehouse
8 between 2013 and 2016; is that right?

9 A. I don't recall.

10 MS. MILLER: Object to form.

11 THE WITNESS: I don't recall?

12 BY MR. LICHTER:

13 Q. How about for the same time period, 2013 to 2016,
14 do you know if Albertsons SOMS played any role after an
15 order was selected at the Ponca City warehouse?

16 A. That would be a question for the Ponca warehouse.
17 I don't know.

18 Q. You don't have any information, one way or the
19 other?

20 A. I don't have any information.

21 Q. Okay. Are you aware of whether Albertsons'
22 suspicious order monitoring system was intended to
23 identify suspicious orders?

24 A. Yes, I believe that was the intent.

25 Q. Do you know whether it ever did actually identify

1 any suspicious orders?

2 A. Yes.

3 Q. Yes, you know; or, yes, it did?

4 A. Yes, it did.

5 Q. It did?

6 Do you know what constituted a suspicious order?

7 A. That would be whatever the parameters that Ponca
8 had set up for receiving the orders, if was an outlier
9 request or a trend. They would have to make that
10 decision.

11 Q. So if an order was an outlier, are you saying
12 that somebody at Ponca would decide whether or not the
13 order was suspicious or not?

14 A. That would be a question for Ponca, how they made
15 those decisions.

16 Q. I'm just asking as a -- as a process.

17 Is it your testimony that somebody at the Ponca
18 warehouse would determine whether or not an order was
19 suspicious?

20 A. Yes.

21 Q. Okay. Was it the role or duty for anybody else
22 outside the warehouse at any time to determine whether an
23 order was suspicious?

24 A. Not to my knowledge, no.

25 Q. Okay. Under Albertsons' SOMS at any time do you

1 know whether the program intended for orders identified as
2 suspicious to be reported to the DEA?

3 A. I don't recall.

4 Q. You don't recall if that was an intent of the
5 SOMS program?

6 A. I don't recall, yes.

7 Q. Do you know whether Albertsons ever actually
8 reported any suspicious orders to the DEA?

9 A. I don't know.

10 Q. Okay. Okay. We can have the next exhibit marked
11 as Exhibit 2.

12 (Exhibit 2 was marked for identification.)

13 BY MR. LICHTER:

14 Q. And, for the record, this is Bates No.

15 ALB-NM00021460.

16 And have you seen this document before?

17 A. Yes.

18 Q. When is the last time you saw it?

19 A. Probably when I wrote it.

20 Q. Okay.

21 A. At least my portion.

22 Q. Okay. So is this the -- a May 13, 2013, e-mail
23 string with e-mails that you sent and received?

24 A. Yes.

25 Q. Okay. And for context 2013 is the year

1 Albertsons restarted self-distributing prescription drugs
2 after its five-year hiatus; is that correct?

3 A. That seems correct, yes.

4 Q. And let's start on page -- the page that is Bates
5 No. 21462.

6 Okay. And on May 8th, 2013, you received this
7 e-mail from Tom Napoli from Actavis; is that right?

8 A. Document 21462?

9 Q. Yes.

10 A. Tom Napoli to me, yes.

11 Q. Okay. May 8th, 2013; is that right?

12 A. Yes.

13 Q. And at this time was Actavis a drug manufacturer
14 that supplied Albertsons' opioids to distribute to its
15 pharmacies?

16 A. Yes, I believe so.

17 Q. Okay. And in the e-mail Tom Napoli writes to
18 you, Hi, Scott. Pursuant to Mary's e-mail on Friday,
19 May 3rd, I just wanted to follow up with a question and a
20 request relative to your SOMS program.

21 After reviewing your excessive order monitoring
22 policy, I noticed that there was reference to, quote,
23 maximum order quantities, end quote, that are established
24 for locations. Can you provide insight as to how these
25 levels are established, i.e., compared to similar pharmacy

1 locations in geographic area, et cetera. I really
2 appreciate your insight.

3 Second paragraph. Let's go ahead and read that.

4 It says, Additionally, since the Actavis
5 acquisition, we have been require -- requiring all of our
6 new and existing customers to sign a compliance
7 acknowledgment form attesting that they maintain a SOMS
8 program in accordance with federal regulations. I would
9 greatly appreciate it if you could review and have the
10 document signed and returned, scanned image is fine, to me
11 as soon as practical.

12 Did I read that correctly?

13 A. Yes.

14 Q. Okay. And let's flip back -- flip back to the, I
15 guess, the preceding page, Bates No. 21461.

16 And it looks like on May 10th, 2013, you write
17 back to Actavis with what appears to be a bullet point
18 summary of Albertsons' SOMS at the time; is that correct?

19 A. Yes.

20 Q. Okay. And is this an accurate summary of
21 Albertsons' SOMS for the 2013-to-2016 time frame?

22 A. This is what was provided to me, yes.

23 Q. Okay. As far as you know, this is an accurate
24 summary; correct?

25 A. Correct.

1 Q. Okay. Are there any other components of the SOMS
2 for the 2013-to-2016 time frame you're aware of that are
3 not listed here?

4 A. I don't know the answer to that.

5 Q. Okay. And it looks like you titled your summary
6 Excessive Order Monitoring Process at Selection by the
7 Warehouse; correct?

8 A. Yes.

9 Q. Okay. And, again, I think you mentioned this
10 before, but you don't know whether or not any SOMS steps
11 occurred prior to an order reaching the warehouse for
12 selection; is that right?

13 A. That's correct.

14 Q. Okay. And we can take a look at the first bullet
15 point here in the summary.

16 It says, During the selection of product
17 selectors have the ability to question any quantity
18 requested.

19 Do you see that?

20 A. Yes.

21 Q. Okay. And this was essentially based on the
22 warehouse employees' gut feeling that there was a problem
23 with the order; correct?

24 A. This is somewhere in the selection process
25 someone made a decision which questioned the quantity

1 requested.

2 Q. Okay. Do you recall if that was based on a gut
3 feeling of that person?

4 A. I don't recall that term, "gut feeling."

5 Q. Do you know if the -- if the process of
6 questioning an order was based on anything else or
7 anything in particular?

8 A. I don't know.

9 Q. Okay.

10 MR. LICHTER: Can we briefly go off the record?
11 I don't see the documents pulled up on my screen here as
12 we're going through. I don't know if you all do.

13 MS. MILLER: I have it on mine.

14 MR. LICHTER: Sure.

15 There we go. Great.

16 BY MR. LICHTER:

17 Q. Okay. The second bullet point here in the
18 summary says, Questions will be directed to pharmacy
19 procurement and, ultimately, to pharmacy compliance for
20 tracking and investigating purposes.

21 Do you see that?

22 A. Yes.

23 Q. Do you know what types of questions went to
24 pharmacy procurement?

25 A. Most of the questions would be why? Is there a

1 larger quality or if they haven't ordered this before,
2 why. Usually it's why.

3 Q. And what did procurement do in response to those
4 questions?

5 A. We would contact field operations to get answers
6 to those questions.

7 Q. And why would the questions then go to pharmacy
8 compliance?

9 A. For tracking and investigating purposes it
10 states.

11 Q. Do you know what type of tracking was done?

12 A. I do not.

13 Q. Do you know what type of investigating was done?

14 A. I do not.

15 Q. Do you know if the investigating would occur
16 after the order was already selected and shipped by the
17 warehouse?

18 A. I don't know the answer to that.

19 Q. Third bullet points. All controlled substances
20 will be audited for accuracy on product and quantity prior
21 to shipment to stores; is that right?

22 A. Yes.

23 Q. Do you know who conducted those audits?

24 A. I do not.

25 Q. The next section says Excessive Order Monitoring

1 Process for Maximum Order Quantity.

2 Do you see that?

3 A. Yes.

4 Q. And is this meant to summarize how the maximum
5 order quantity process worked?

6 A. Yes.

7 Q. And the first bullet says maximum pick quantity
8 is drug-specific.

9 Do you see that?

10 A. Yes.

11 Q. So each drug had its own maximum order quantity;
12 correct?

13 A. That would be a question for the Ponca team. It
14 states that, yes.

15 Q. And do you know if that was the same number
16 across different stores?

17 A. Say again, please.

18 Q. Would that be the same number across different
19 stores?

20 A. I don't know the algorithm that Ponca used for
21 that.

22 Q. Okay. The second bullet here says maximum pick
23 limit is established based on historical aggregate data
24 and coded prior to the selection process.

25 Do you see that?

1 A. Yes.

2 Q. Do you know who set these pick limits?

3 A. I do not.

4 Q. Do you know what would happen if an order reached
5 one of these pick limits?

6 A. That would be a question for the Ponca team.

7 Q. Well, I'm asking if you know.

8 A. I don't know.

9 Q. So you don't know if orders were shipped in full
10 or reduced or rejected? No information?

11 A. I wouldn't have that information, no.

12 Q. Okay. And third bullet in this section says
13 maximum pick limit review by drug for accuracy of limit is
14 completed at the very least quarterly.

15 Do you see that?

16 A. Yes.

17 Q. Do you know who conducted those reviews?

18 A. I do not.

19 Q. Do you know how these maximum pick limits were
20 set?

21 A. No.

22 Q. And then it says acknowledgment form completed.

23 Do you see that?

24 A. Yes.

25 Q. Okay. If you look at 21465, I believe it's the

1 last page of this document.

2 And it looks like attached to the e-mails we were
3 just looking at, we have the signed compliance
4 acknowledgment form signed on behalf of Albertsons by
5 James Tsipakis, dated May 10, 2013; correct?

6 A. Yes.

7 Q. Okay. And James Tsipakis was the VP of
8 prescription services for Albertsons at this time;
9 correct?

10 A. That's what the title says, yes.

11 Q. Do you have a different understanding as to what
12 his title may have been?

13 A. No.

14 Q. Okay. Do you know if this was ultimately sent to
15 Actavis on May 10th, 2013?

16 A. I believe so. It says acknowledgment form
17 completed. I assume I would have sent that.

18 Q. Okay. Can you flip over to the first page --

19 A. Okay.

20 Q. -- No. 21460, and it looks like on May 13, 2013,
21 you write it to a few people, including Jim Tsipakis, to
22 say, Team, I talked to Tom at Watson/Actavis today to
23 inquire if this was sufficient. He indicated it was.

24 So this means that Tom over at Actavis accepted
25 your bullet point explanation of Albertsons' SOMS; is that

1 right?

2 A. As well as the signed --

3 Q. As well as the signed --

4 A. -- compliance acknowledgment form. Yes.

5 Q. Okay. And when you say it was sufficient, that
6 means that it was sufficient for Actavis to continue to
7 supply Albertsons with opioids; correct?

8 A. It means the response was sufficient.

9 Q. Sufficient for what?

10 A. For the request to have the forms to sign to
11 complete it.

12 Q. And --

13 A. Execution with Actavis thereafter, I don't know.

14 Q. Okay. You can set this one aside. I will have
15 the next document marked as Exhibit 3.

16 (Exhibit 3 was marked for identification.)

17 BY MR. LICHTER:

18 Q. And the formatting of this document makes the
19 text very tiny.

20 A. Oh, my goodness.

21 Q. So, hopefully, our trial tech here can blow up
22 the sections that we're looking at.

23 MS. MILLER: Can I move this so you can see it?

24 Oh, you have one.

25 THE WITNESS: I have one.

1 MR. LICHTER: And it is also be on the giant
2 screen there.

3 THE WITNESS: Okay.

4 MS. MILLER: Can you see that better?

5 THE WITNESS: I can see that much better. Thank
6 you.

7 BY MR. LICHTER:

8 Q. I will represent this is how the document was
9 produced to us. I didn't make any changes to it one way
10 or the other.

11 And, again, we're marking this as Exhibit 3. The
12 Bates number of this document is ALB-NM00018403.

13 And have you seen this document before?

14 A. Yes.

15 Q. When is the last time you saw it?

16 A. I reviewed it briefly yesterday.

17 Q. Okay. And is this a November 26, 2013, e-mail
18 string with e-mails that you sent and received?

19 A. Yes. I'm not able to scroll this at all.

20 Okay. Yes.

21 Q. If there is any portion of the document --

22 A. Okay. Thank you.

23 Q. -- you would like to see on the screen, you can
24 ask the trial tech to move it around for you.

25 A. Thank you.

1 Q. Sure.

2 And let's look at the first e-mail in the chain
3 which starts on the bottom of the first page.

4 And this is from William Simmons from Actavis on
5 November 13, 2013.

6 Do you see that?

7 A. Yes.

8 Q. Okay. And he writes, Dear Valued Supply Chain
9 Partner, The following communication is being sent on
10 behalf of Tom Napoli, Associate Director of Controlled
11 Substance Compliance, Actavis Pharmaceuticals.

12 In support of our corresponding obligation to
13 maintain effective controls against diversion of
14 controlled substance product into the illicit market, the
15 Actavis DEA Affairs Department is taking the opportunity
16 to update the company's, quote, Know Your Customer,
17 unquote, program due diligence files.

18 Within this context, please see the attached
19 documentation detailing a request for updated information
20 and your requested actions in support of a continued and
21 strengthened customer partnership based on mutual
22 compliance.

23 Did I read that correctly?

24 A. I believe so, yes.

25 Q. Okay. Do you know what he is referring to when

1 he says the Actavis Know Your Customer program?

2 A. No. The e-mail is from William Simmons to
3 himself, cc'ing Tom Napoli, so I don't recall.

4 Q. Okay.

5 A. Yeah.

6 Q. And toward the bottom of the first page, you
7 respond to William Simmons on November 13th, 2013;
8 correct?

9 A. Yes.

10 Q. Okay. And you write, Mr. Simmons, there are
11 certain statements in your documents that my legal team
12 would recommend changing. Please send the documents in
13 Word format so we may redline and return.

14 Do you see that?

15 A. Yes.

16 Q. And the next e-mail in the chain is from you to
17 Lynette Berggren on November 15th, 2013; correct?

18 A. No. The next is from William Simmons back to me.

19 Q. Sorry. The e-mail right above that. I
20 apologize.

21 A. Okay. Yes.

22 Q. Okay. Again, this is November 15, 2013, from you
23 to Lynette Berggren; correct?

24 A. Yes.

25 Q. Okay. And you write, Lynette, I know you did not

1 like statements made in the pdf version, so let's attempt
2 to redline with something that is right for us and send
3 back to Actavis.

4 Do you see that?

5 A. Yes.

6 Q. And on November 26, 2013, Lynette responds,
7 Scott, Attached is the redline Actavis compliance form;
8 correct?

9 A. Yes, that's what it states.

10 Q. Okay. And we can look at the last page here on
11 the document Bates-numbered 18405.

12 And this is the compliance acknowledgment form
13 attached to this e-mail which is the redline version from
14 Lynette Berggren; correct?

15 A. Yes.

16 Q. Okay. And let's look at the last sentence of the
17 first paragraph as it was originally written.

18 The sentence that starts with the word "Further."

19 Do you see that?

20 A. Yes.

21 Q. Okay. It says, "Further, customer acknowledges
22 that it will not distribute or dispense controlled
23 substances if it suspects that a prescription has not been
24 issued for a legitimate medical purpose or in the normal
25 course of professional practice or if it determines that

1 questions exist regarding the proper usage and/or adequate
2 legal compliance by its customer.

3 Did I read that right as it was originally
4 written?

5 A. Yes.

6 Q. Okay. And Albertsons' redline version removes
7 the promise that Albertsons will not dispense controlled
8 substances if it suspects that a prescription has been
9 issued for -- has not been issued for a legitimate medical
10 purpose or in the normal course of professional practice;
11 correct?

12 A. Yes.

13 Q. Okay. Did Actavis have any issues with these
14 edits?

15 A. I don't recall.

16 Q. Do you agree with the appropriateness of these
17 edits?

18 A. It wasn't my edits.

19 Q. Okay. Do you agree with the appropriateness of
20 the edits?

21 A. That is -- that was legal decision. Not my
22 decision, so I don't know. I don't know if I agree or
23 not.

24 Q. Okay.

25 A. Okay?

1 Q. Okay.

2 A. All right.

3 Q. Did Albertsons sign and return this
4 acknowledgment form to Actavis with these edits?

5 A. I don't know.

6 Q. You can set this one aside.

7 I have the next document marked as Exhibit 4.
8 (Exhibit 4 was marked for identification.)

9 MR. LICHTER: Can I pass this to you, Gretchen?

10 BY MR. LICHTER:

11 Q. Have you seen this document before?

12 A. Yes.

13 Q. I'm sorry. Just for the --

14 A. Briefly -- briefly, yes.

15 Q. Okay. I'm sorry. Just for the record this is
16 Bates-numbered ALB-NM00006131.

17 And you said you have seen this before briefly;
18 correct?

19 A. Briefly. Just the first page I look at briefly.

20 Q. Okay. Do you remember the last time you saw it?
21 When was the last time you saw it?

22 A. Yesterday or Monday.

23 Q. Okay. And is this a July 26, 2013, memo from
24 Jack Gagnon?

25 A. Yes, Jack Gagnon, it looks like, is the author,

1 yes.

2 Q. And he was the general manager at the Ponca City
3 distribution center in 2013; correct?

4 A. Yes. That is what it states, yes.

5 Q. Okay. And the title here is McKesson Meeting:
6 Talking Points - Ponca Response.

7 Do you see that?

8 A. Yes.

9 Q. Okay. Do you know what this title is referring
10 to?

11 A. I would infer this is a McKesson meeting that
12 Ponca was involved in and they wanted to give some
13 response.

14 I don't know where this went to, though.

15 Q. Okay. Do you recall whether you attended the
16 meeting with McKesson referenced here?

17 A. I don't recall.

18 Q. Would that have been something that you would
19 have been involved in at this time in 2013?

20 A. I don't know if this is an in-person meeting or
21 telephonic meeting or if I was there.

22 Normally, I would be involved, yes.

23 Q. So you could have been involved and you don't
24 remember?

25 A. Correct.

1 Q. Okay. Do you know who else would have attended
2 this meeting?

3 A. No.

4 Q. Okay. Do you have any idea what the purpose of
5 the meeting may have been?

6 A. It looks like it has to do with controlled
7 substances, but, no, I don't know.

8 Q. Okay.

9 A. Yeah.

10 Q. Looking at the middle of the first page where it
11 says 6613.

12 Do you see that?

13 A. Yes.

14 Q. Okay. Right underneath that it says still having
15 problems with Ponca cutting orders based on gut feel.

16 Do you see that?

17 A. I see that.

18 Q. Okay. And this is referring to the selectors at
19 the Ponca City distribution center reducing order
20 quantities based on their gut feelings and shipping them
21 out; correct?

22 A. I don't know.

23 Q. Okay. You don't know about the context of this
24 document, whether or not -- or what it's referring to?

25 A. I don't know if it says -- does it say selectors

1 in here anywhere. I don't know that I see that it does.

2 Q. Based on this -- based on the context of the
3 document, is it fair to say that this is referring to the
4 selectors at the Ponca City distribution center?

5 MS. MILLER: Object to foundation.

6 THE WITNESS: Yeah. I don't know the answer to
7 that.

8 It would be something that Ponca would have to
9 decide whether it was selectors or somebody at Ponca, yes.

10 BY MR. LICHTER:

11 Q. Okay. And toward the end of this same paragraph
12 where it says "At Ponca."

13 Do you see that?

14 A. Yes.

15 Q. It says, At Ponca our IT department has written a
16 program to help us identify orders that are 20 percent
17 over the normal order quantity.

18 This information will be sent to Scott Johnson
19 and his team to review our, quote, gut feel, quote/end
20 quote, is for the protection of the company.

21 Do you see that?

22 A. Yes.

23 Q. Okay. So in 2013 was the threshold for
24 identifying suspicious orders set at 20 percent over the
25 normal order quantity?

1 A. It says the program has been written. It doesn't
2 say it's been implemented, but...

3 Q. So you don't know if -- if that was actually what
4 was happening?

5 A. I don't know.

6 Q. Okay. And do you know if the threshold, whatever
7 it may have been, was applied at the prewarehouse phase or
8 at the warehouse selection phase?

9 A. I don't know whether the -- that would -- no, I
10 don't. No.

11 Q. Okay. Do you know what constituted the normal
12 order quantity?

13 A. I do not.

14 Q. Okay. Do you recall whether the threshold --
15 whether it was 20 percent or any other number, do you
16 recall whether that ever changed while Albertsons was
17 distributing prescription drugs?

18 A. I don't recall.

19 Q. And do you know if this process was in place from
20 2013 to 2016?

21 A. I don't recall.

22 Q. Okay. Do you know how Albertsons arrived at this
23 threshold calculation?

24 A. That would be a Ponca question. I don't know.

25 Q. Do you know who decided that this would be the

1 threshold?

2 A. No, I do not.

3 Q. Okay. It says -- excuse me. This information
4 will be sent to Scott Johnson and his team to review.

5 Do you see that?

6 A. Yes.

7 Q. What information is he talking about?

8 MS. MILLER: Object to foundation.

9 THE WITNESS: It looks like it's to review a
10 written program to identify orders of 20 percent over
11 normal order quantity.

12 BY MR. LICHTER:

13 Q. So that would that be orders that were 20 percent
14 over normal order quantity would be sent to you and your
15 team to review?

16 A. No. Just the process.

17 Q. Just the process.

18 And who else was part of your team at this time?

19 A. I had a number of people on my team that reported
20 to me.

21 Q. About how many?

22 A. Six, eight.

23 Q. Do you remember any of their names?

24 A. Yes. They were not part of this process, but,
25 yes.

1 Q. Do you remember any names of people that were
2 part of this process?

3 A. This is just for me to review only. It wasn't
4 for anyone else on my team to review.

5 Q. Even though it says it's being sent to
6 Scott Johnson and his team to review, you're the only one
7 that reviewed this process?

8 A. Yeah. As far -- as far as I recall, yes.

9 Q. Okay. Do you know what the review entailed?

10 A. Just a review.

11 Q. Were you reviewing it for accuracy, for
12 compliance, for -- for anything in particular?

13 A. It wasn't -- it wasn't for me to determine
14 accuracy or compliance. It was just to look at it,
15 correct.

16 Q. So what was the purpose of you -- your review?

17 A. Because I had responsibility for pharmacy
18 procurement. That's -- that was part of the reasoning.
19 Just to have the pharmacy procurement team just review
20 what they had set up.

21 Q. Do you know if any changes were made to the
22 process as a result of your review?

23 A. I don't recall.

24 Q. Okay. So actual orders that exceeded a threshold
25 weren't ever sent to you or your team to review; is that

1 correct?

2 A. Correct.

3 Q. Okay. Do you know what it means when he says our
4 gut feel is for the protection of the company?

5 A. That would --

6 MS. MILLER: Object to foundation.

7 THE WITNESS: That would be a question for
8 Jack Gagnon.

9 BY MR. LICHTER:

10 Q. But I'm asking you if you know.

11 A. I don't know.

12 Q. Okay. We can set this one aside. We'll mark --

13 MS. MILLER: Actually, before we start a new
14 document, can we do a break?

15 MR. LICHTER: Sure. Perfect. Yeah. We could do
16 ten minutes? Is that okay with everyone?

17 THE WITNESS: That's good for me.

18 THE VIDEOGRAPHER: Okay. We are going off
19 record. The time is now 11:03.

20 (A recess was taken from 11:03 a.m. until
21 11:12 a.m.)

22 THE VIDEOGRAPHER: We are going back on record.

23 The time is 11:12.

24 MR. LICHTER: Okay. I'll have the next document
25 marked as Exhibit 5.

1 (Exhibit 5 was marked for identification.)

2 BY MR. LICHTER:

3 Q. For the record, this is Bates-numbered
4 ALB-NM00017941.

5 And, Mr. Johnson, have you seen this document
6 before?

7 A. No.

8 Q. Okay. Looking at the document, does this appear
9 to be a July 10, 2014, e-mail you sent to Nikki Price?

10 A. Yes.

11 Q. And who is Nikki Price?

12 A. Nikki Price, I believe, was in the compliance
13 department at that time.

14 Q. So she didn't report to you?

15 A. No.

16 Q. And your e-mail says, Lynette indicates we do not
17 need to report each time we remove product from an order.
18 We must report to DEA once we believe it to be suspicious.

19 Do you see that?

20 A. Yes.

21 Q. Is the Lynette you're talking about here Lynette
22 Berggren?

23 A. Yes.

24 Q. Okay. When you say each time we remove product
25 from an order, are you referring to the practice of

1 cutting or reducing opioid orders before they're shipped
2 to Albertsons' pharmacies?

3 A. Yes.

4 Q. Okay. And was it your understanding that if
5 Albertsons cut an order and shipped it, it was not
6 required to report that order to the DEA?

7 A. That's what it states.

8 Q. So that is your understanding?

9 A. That is what was written in the e-mail, yes.

10 Q. Okay. And do you have an understanding as to why
11 that was the case?

12 A. I do not.

13 Q. Do you know if there's a difference between a cut
14 order and a suspicious order?

15 A. A cut order would be an order that did not ship
16 in full to a pharmacy. Suspicious order, I don't know.

17 Q. Do you know whether suspicious orders were cut
18 orders?

19 A. I don't know if they were actually cut, to be
20 honest. They probably were sometimes or in their opinion
21 they might be suspicious.

22 Q. And when you say we do not need to report or we
23 must report, are you referring to the procurement
24 department or Albertsons as a whole?

25 A. That would be Albertsons as a whole.

1 Q. Your department didn't have any role in reporting
2 suspicious orders to the DEA; is that right?

3 A. Correct.

4 Q. Okay. And you specifically didn't have any role
5 in reporting orders to the DEA; is that right?

6 A. Correct.

7 Q. Okay. Do you know who was in charge of reporting
8 suspicious orders to the DEA?

9 A. I do not.

10 Q. Okay. And in the e-mail you say, secondly for
11 guardrails and then you list what you identify as triggers
12 for certain bottle counts.

13 Do you see that?

14 A. Yes.

15 Q. Okay. And can you explain what these triggers
16 are?

17 A. I don't recall honestly.

18 Q. Okay. Do you know what would happen if a bottle
19 count reached a trigger?

20 A. I don't know.

21 Q. Do you know what period of time these figures
22 were in place?

23 A. No, other than it's dated July 10, 2014.

24 Q. Okay. Do you know who would have set these
25 triggers?

1 A. I do not know.

2 Q. Do you know if the triggers ever changed?

3 A. I don't know.

4 Q. And do you know why you would be e-mailing this
5 information to Nikki Price?

6 A. I don't recall.

7 Q. Okay. All right. Set this one aside.

8 I will mark the next document as Exhibit 6.

9 (Exhibit 6 was marked for identification.)

10 BY MR. LICHTER:

11 Q. For the record, this is Bates-numbered

12 ALB-NM00014384.

13 And have you seen this document before?

14 A. Yes.

15 Q. When is the last time you saw it?

16 A. Briefly, in the last one or two days.

17 Q. Okay. Was this an e-mail you sent to Tim Mills
18 and others on October 31, 2014, with an attachment?

19 A. Yes.

20 Q. And who is Tim Mills?

21 A. Tim Mills was part of the IT team at Ponca City
22 warehouse.

23 Q. Okay. In your e-mail you write, Tim, based on
24 our call yesterday, we have decided to proceed to the next
25 step by enhancing the SOMS pilot.

1 Do you see that?

2 A. Yes.

3 Q. Can you explain what the SOMS pilot was?

4 A. Suspicious order monitoring pilot.

5 Q. Can you explain what the -- was that a program?

6 Was it a pilot program?

7 A. It says it's a pilot program, yes.

8 Q. Can you give any information as to what that
9 pilot program entailed?

10 A. No.

11 Q. You don't recall?

12 A. I don't recall.

13 Q. Is this something you would have known about at
14 the time you sent the e-mail?

15 A. Possibly.

16 Q. Do you know whose idea the SOMS pilot program
17 was?

18 A. I do not.

19 Q. Do you know if the SOMS pilot program was ever
20 actually implemented?

21 A. I do not.

22 Q. Do you know how the SOMS pilot program was
23 different than the program Albertsons already had in
24 place?

25 A. I don't know.

1 Q. Are -- you then write, we will ask you to turn on
2 the new process and run it in parallel with the current
3 process. We want to capture the data for both components
4 to assess.

5 Do you see that?

6 A. Yes.

7 Q. And you -- so you don't know how the SOMS pilot
8 differed from the current process?

9 A. I don't recall how -- how -- how it was
10 different.

11 Q. Okay. Do you know what type of data you wanted
12 captured here?

13 A. No.

14 Q. Okay. Do you recall what the results were of the
15 assessment that you reference here?

16 A. I do not.

17 Q. Okay. And the second half of the e-mail is
18 addressed to David.

19 Do you see that?

20 A. Yes.

21 Q. It says, Please continue your current SOMS calls
22 to stores as you are doing today and apply the new
23 questions previously developed.

24 I have attached the questions for your
25 convenience. Please have Sandy Evans or yourself send the

1 daily response to both Nikki and myself.

2 Do you see that?

3 A. Yes.

4 Q. And was this portion of the e-mail meant for
5 David Beck who worked at the warehouse?

6 A. Yes.

7 Q. Okay. Can you explain the process of sending the
8 daily response to both Nikki and yourself?

9 A. If it was a daily response, if they contacted
10 stores, what was the response of the stores.

11 Q. So that would be every day David Beck and/or
12 someone from his team would contact pharmacies for certain
13 orders; is that right?

14 A. Yes.

15 Q. Okay. And those pharmacies would obviously
16 respond to whatever questions they had on their calls;
17 correct?

18 A. Yes. They were supposed to, yes.

19 Q. And those responses were -- were noted by David
20 Beck and his team; correct?

21 A. That's my understanding, yes.

22 Q. Okay. And then the pharmacist responses were
23 sent to you and Nikki Price?

24 A. Yes.

25 Q. Okay. Were those responses contained on -- on a

1 daily spreadsheet that you received from them?

2 A. I don't recall.

3 Q. You don't recall the -- the form of the responses
4 in any way?

5 A. I do not.

6 Q. Okay. Do you recall whether you received those
7 daily responses from them?

8 A. I don't recall.

9 Q. Okay. Do you know why they would be sending you
10 and Nikki Price daily responses?

11 A. I don't. I know Nikki was a part of the
12 compliance team. Maybe because we were both working
13 together on this. That would be my only explanation.

14 Q. So did you do anything one way or the other with
15 these responses that you would receive?

16 A. I did not.

17 Q. You did not do anything?

18 A. No.

19 Q. Okay. Do you know if this process that we're --
20 that's being discussed here, this related to Albertsons'
21 SOMS program?

22 A. Say again, please.

23 Q. Yeah. Is the process that we're discussing here
24 regarding the sending the responses -- the daily responses
25 to Nikki and yourself, was this a part of Albertsons'

1 SOMS' program?

2 A. I don't know the answer to that.

3 Q. Okay.

4 A. It was just a request that we made.

5 Q. Okay. So -- so they would send the responses to
6 you and you wouldn't do anything with them?

7 A. I did not take action on them. Correct.

8 Q. Okay. Did anybody else on your team take action
9 with them?

10 A. Not on my team, no.

11 Q. Okay. Do you know if anybody at all took action
12 on them?

13 A. I do not know.

14 Q. Okay. Then why are you requesting in this e-mail
15 for the responses to be sent to you?

16 A. To review. To look at.

17 Q. So did you review them?

18 A. I don't recall.

19 Q. Okay. So you didn't do anything -- you don't
20 recall doing anything like investigating any of the
21 responses or following up with pharmacies? Anything like
22 that?

23 A. I wouldn't do any investigating, that's -- that's
24 for certain. Any investigation would be from the
25 compliance team.

1 Q. Okay.

2 A. It would not be me.

3 Q. It wouldn't be you or anybody on your team;
4 correct?

5 A. Correct.

6 Q. And you don't know one way or the other whether
7 Nikki and the compliance team did anything with these
8 responses either; correct?

9 A. I don't know.

10 Q. Okay. Okay. Let's set this one aside. Have the
11 next document marked as Exhibit 7.

12 (Exhibit 7 was marked for identification.)

13 BY MR. LICHTER:

14 Q. For the record, this document is Bates-numbered
15 ALB-NM00001409.

16 Have you seen this document before?

17 A. Yes.

18 Q. Okay. And when is the last time you saw it?

19 A. Possibly 2014.

20 Q. Okay. Excuse me.

21 Is this the March 18th, 2014, pharmacy supply
22 chain compliance committee agenda?

23 A. Yes.

24 Q. Okay. And you're listed here as a committee
25 member; correct?

1 A. I'm listed as a meeting leader, yes.

2 Q. Okay. Were you also a -- Yeah. Correct.

3 A. And a committee member.

4 Q. And a committee member.

5 A. Thank you.

6 Q. Okay. Do you know for what years you were a
7 committee member?

8 A. As long as I was in position, I was a committee
9 member and we held meetings, yes.

10 Q. As long as you were in what position?

11 A. Position of pharmacy procurement.

12 Q. Okay. And, generally, what was the committee
13 responsible for doing?

14 A. It says the purpose is inform and collaborate
15 with distribution leadership on current compliance topics,
16 impacting the acquisition, and distribution of drugs and
17 related products by our Ponca facility.

18 Q. And that was generally the responsibility of the
19 committee for every meeting?

20 A. I don't know if this is the same response for
21 every committee meeting. That's -- that's this document.

22 Q. Well, as a member of the committee do you
23 remember a general overall goal of the committee that you
24 were on?

25 A. Yeah. The -- the overall goal was to assist the

1 Ponca team with the acquisition and distribution of drugs
2 out of that facility.

3 Q. Okay. And how often did the committee meet?

4 A. Maybe quarterly. Maybe twice a year. I don't
5 recall.

6 Q. But is one of the two quarterly or twice the
7 year?

8 A. At least twice a year. May have been more often
9 than that.

10 Q. Okay. And if you're listed here as a committee
11 member, does that mean you attended this meeting on
12 March 18th, 2014?

13 A. I don't recall whether I attended, but I was on
14 the meeting. Could have been telephonically.

15 Q. Typically, would all of the committee members
16 have attended these meetings?

17 A. No.

18 Q. How was it decided which committee members would
19 attend?

20 A. Depends on if they were on PTO or had conflicts,
21 maybe they could not attend.

22 Q. Okay. Other than things like -- what do you mean
23 by "PTO"?

24 A. Paid time off.

25 Q. Okay. Other than paid time off and scheduling

1 conflicts, were all of the committee members generally
2 expected to attend these meetings?

3 A. Yes. If available, yes.

4 Q. Okay. And this agenda is organized in a chart
5 form with the prioritized agenda topics on the left, the
6 discussion leader for each topic in the middle and then
7 the time on the right; correct?

8 A. Yes.

9 Q. Okay. If you look at page 1410. It's the second
10 page of this document.

11 And the topic 8. It says, Appointment of a
12 compliance manager duties to minimally include
13 DEA-controlled substance compliance.

14 Do you see that?

15 A. Yes.

16 Q. And you're listed as the discussion leader;
17 correct?

18 A. Yes.

19 Q. Can you explain what your discussion of this
20 topic entailed?

21 A. I don't recall.

22 Q. You don't recall any details, one way or the
23 other?

24 A. I don't recall. Sorry.

25 Q. Do you know why a compliance manager was needed?

1 MS. MILLER: Object to form.

2 THE WITNESS: I don't know.

3 BY MR. LICHTER:

4 Q. Did you ultimately appoint a compliance manager?

5 A. I don't recall.

6 Q. Do you recall what the duties of the compliance
7 manager were or supposed to be?

8 A. I do not.

9 Q. Okay. Do you recall what the duty regarding
10 DEA-controlled substance compliance involved?

11 A. I do not.

12 Q. Okay. But you were the discussion leader on this
13 topic; correct?

14 A. Correct.

15 Q. Okay. That means you gave some sort of
16 presentation on this topic for this meeting.

17 A. I don't recall.

18 Q. Well, as a -- as the listed discussion leader is
19 that typically what that would mean?

20 A. Discussion leader could be "This is topic 8." So
21 I would open the discussion of topic 8. It wouldn't
22 necessarily lead the discussion, but I would open the
23 discussion on topic 8.

24 Q. Okay. Is that typically what you did when you
25 were a discussion leader for certain topics? You would

1 just announce the topic itself?

2 A. Yes.

3 Q. Without giving any additional information or
4 leading the discussion?

5 A. Yes.

6 Q. Okay. Is that typical for all of the committee
7 members that are assigned as -- as discussion leaders?

8 A. Others may have more information to offer.

9 For instance, on topic 4 is the general manager,
10 Jack Gagnon, may have led that discussion because he's
11 right there at the Ponca facility.

12 Q. Do you know why you would be selected as the
13 discussion leader for topic 8?

14 A. By default sometimes.

15 Q. Okay. It wasn't because you had any sort of
16 special information or insight as to that topic?

17 A. No. If it was a topic that was not specific to
18 someone as the meeting leader, my name went down.

19 Q. Okay. Set that one aside.

20 On to the next document marked as Exhibit 8.

21 (Exhibit 8 was marked for identification.)

22 THE WITNESS: Thank you.

23 BY MR. LICHTER:

24 Q. For the record, this document is Bates-labeled
25 ALB-NM00015706.

1 Have you seen this document before?

2 A. I don't recall seeing this document, no.

3 Q. Okay. Does this appear to be a June 6, 2016,
4 e-mail you received from Darrell Adams?

5 A. Yes.

6 Q. Okay. And in the signature block, it says
7 Darrell Adams was the manager of pharmacy operations for
8 Albertsons at this time; is that right?

9 A. Yes.

10 Q. Okay. And the e-mail says: DPOs, Wanted to
11 provide a couple updates that we have received.

12 What are DPOs?

13 A. Director of pharmacy operations, I believe, or
14 division pharmacy operations. One of the other titles.

15 Q. Okay. That wasn't your title at this time, was
16 it?

17 A. No.

18 (Sneezing.)

19 MR. LICHTER: Bless you.

20 THE COURT REPORTER: Thanks.

21 BY MR. LICHTER:

22 Q. Why were you being included in this e-mail?

23 A. Because it's product that was leaving probably
24 Ponca and moving to stores. And so anything product
25 movement I usually would be copied on.

1 Q. [Okay. The e-mail continues, We only have a
2 couple more weeks of Ponca inventory left approximately
3 \$8.6 million left to move which is down from 25.4 million
4 in total inventory four weeks ago.

5 Do you see that?

6 A. Yes.

7 Q. Is this referencing the fact that the Ponca City
8 distribution center stopped distributing drugs in 2016?

9 A. Yes. They were slowly winding down --

10 Q. Okay.

11 A. -- correct.

12 Q. So 25.4 million in inventory down to 8.6 million
13 in inventory refers to the amount of product left on the
14 shelves at the Ponca warehouse; correct?

15 A. Yes.

16 Q. Okay. And a few lines down it says: All
17 medications, including C2s, are being pushed out to the
18 stores. Only stores on CSOS are receiving the C2s. Store
19 will see product coming in that they do not need or
20 ordered in the past. This is a necessary evil with the
21 Ponca flush.

22 Did I read that right?

23 A. Yes.

24 Q. Okay. Do you see that the phrase including C2s
25 is bolded and underlined?

1 A. Yes.

2 Q. Okay. So does this mean Albertsons was sending
3 out all of its drugs, including Schedule II and Schedule
4 III opioids to its pharmacies across the country, even if
5 the pharmacies didn't order them?

6 MS. MILLER: Object to form.

7 THE WITNESS: Yes.

8 BY MR. LICHTER:

9 Q. Okay. That was your understanding of what was
10 going on here?

11 A. Yes, because they were closing that warehouse for
12 the pharmacy.

13 Q. Right. And was this, quote, push limited to
14 certain geographic areas or was this to all Albertsons
15 stores that you use CSOS?

16 A. It says only stores on CSOS are receiving C2s.
17 So those are specific stores.

18 Q. Okay. Those are specific stores?

19 A. Yes.

20 Q. But -- but other than that limitation, these were
21 being pushed out to all of Albertsons' stores across the
22 country; right?

23 A. Yes, based on historical movement.

24 Q. Yeah.

25 A. If they use the product, yes, they would receive

1 some product.

2 Q. Okay. And what does CSOS stand for?

3 A. Control substance ordering system.

4 Q. And what is that?

5 A. It's an electronic process to request and receive
6 controlled substances or C2s. Excuse me.

7 Q. Okay. So all of the Albertsons pharmacies across
8 the country that were on this electronic ordering system
9 would receive Schedule II controlled substances even
10 though they hadn't ordered these; is that right?

11 A. Only if they used them in the past.

12 Q. Right.

13 A. If they had no use of them in the past, they
14 would not receive that product.

15 Q. Right. But they wouldn't have ordered these ones
16 that are being pushed out to them; is that fair?

17 A. Fair.

18 Q. Okay. Do you know if most of Albertsons'
19 pharmacies used the CSOS program at this time?

20 A. I don't recall.

21 Q. Okay. And this would have pushed unwanted
22 Schedule II and Schedule III opioids into stores located
23 in Tarrant County that didn't actually order them; right?

24 A. If they had historical usage, yes.

25 Q. Right. Okay.

1 Do you know why this would be a necessary evil?

2 A. Business decision to clothe the -- close the
3 pharmacy Ponca warehouse distribution to move the product
4 and felt it best to move to the stores for usage for
5 patients.

6 Q. Okay. So is it necessary because Albertsons
7 would lose money if the drugs wouldn't -- weren't pushed
8 out?

9 A. No. It was -- it was a request by the business
10 to move the inventory from the Ponca warehouse to the
11 stores if they would use the product potentially.

12 Q. So what's -- what is necessary in the phrase
13 "necessary evil" mean? Why is it necessary to push these
14 drugs out?

15 A. If a store used a certain quantity of something
16 and they received a larger than an amount, that would be a
17 necessary evil, or if they didn't want it, they had
18 historical usage, we would send them some product.

19 Q. Do you know why this process would be considered
20 evil?

21 A. No. It's not my e-mail.

22 Q. It's not -- not your phrase, but do you know why
23 that phrase was used here in the context of what is going
24 on? Do you know why the phrase "necessary evil" was used?

25 MS. MILLER: Object to foundation on this

1 document.

2 THE WITNESS: Yeah, the only reason I can think
3 of would be that it added physical inventory to the stores
4 and we had a constraint of working capital.

5 BY MR. LICHTER:

6 Q. Okay. And the last bullet here says: I have
7 attached the list of medications that are going to be
8 pushed and focused on for this week.

9 Do you see that?

10 A. Yes.

11 Q. I would like to go ahead and take a look at the
12 attachment, which was a spreadsheet Bates-labeled
13 ALB-NM00015710, which we printed.

14 And if you can look at the second to last page of
15 the attachment to see some of the specific medications
16 Albertsons, quote, pushed and focused on.

17 And let me know when you're there.

18 A. Yes.

19 Q. Okay. And we get started about seven or so boxes
20 from the bottom. Do you see where it says Fentanyl 1200
21 microgram lozenges?

22 A. Yes.

23 Q. Okay. And then below that it says Fentanyl 1600
24 microgram lozenges; correct?

25 A. Yes.

1 Q. A few lines down it says Fentanyl 800 microgram
2 lozenges; correct?

3 A. Yes.

4 Q. I also see hydrocodone compound syrup; correct?

5 A. Yes.

6 Q. Okay. And these are all opioid medications;
7 correct?

8 A. These seem to be opioids, yes.

9 Q. And on the very last page here of the spreadsheet
10 another hydrocodone medication at the bottom; correct?

11 A. Yes.

12 Q. Would Albertsons have lost money if they did not
13 push these medications out to the pharmacies that didn't
14 order them?

15 MS. MILLER: Object to form.

16 THE WITNESS: They could be returned for -- to
17 our company that we contracted with when it became
18 outdated to recover money, yes.

19 BY MR. LICHTER:

20 Q. Would Albertsons have missed out on potential
21 profit of selling the medications if they did return those
22 to the manufacturers?

23 MS. MILLER: Object to form.

24 THE WITNESS: I don't know. I couldn't tell you
25 if all the products that were dispensed are profitable or

1 not.

2 BY MR. LICHTER:

3 Q. Okay. In hindsight, do you think it may have
4 been a bad idea for Albertsons to push out these drugs to
5 pharmacies across the country that didn't request them?

6 MS. MILLER: Object to form.

7 THE WITNESS: It was requested by the business to
8 accomplish this.

9 BY MR. LICHTER:

10 Q. Sure. Yeah. I -- I don't dispute that.

11 I'm asking if you think that was a bad idea.

12 A. It wasn't my opinion.

13 Q. Do you have an opinion?

14 A. I do not.

15 Q. Set this one aside.

16 The next document marked as Exhibit 9.

17 (Exhibit 9 was marked for identification.)

18 THE WITNESS: Thank you.

19 BY MR. LICHTER:

20 Q. For the record, this document is Bates-numbered
21 ALB-MDLCT9-00045707.

22 And have you seen this document before?

23 A. May I review it first, please?

24 Q. Sure.

25 A. Thank you.

1 Q. Let me know when you're ready.

2 A. Okay. I'm ready.

3 Q. Have you seen this document before?

4 A. No.

5 Q. Okay. Does this appear to be a June 2, 2017,
6 calendar request that you sent yourself along with a few
7 attached e-mails?

8 A. Okay.

9 Q. Is that what it appears to be?

10 A. Yes.

11 Q. Okay. And let's flip over to page 45710, which
12 is the last page of the document.

13 A. Okay.

14 Q. And the first e-mail on this page appears to be
15 an e-mail you sent to McKesson on April 18th, 2017;
16 correct?

17 A. Yes.

18 Q. Okay. And you write to Jill Owen from McKesson
19 to say: Jill, the following families of drugs are causing
20 some diversion issues. We are curious given our demand
21 could we move to 100 count on all items and when.

22 Do you see that?

23 A. Yes.

24 Q. And the drugs apparently causing diversion issues
25 are Tramadol 50 milligrams, generic Tylenol No. 3,

1 Carisoprodol 350 milligrams, hydrocodone combination
2 products, with a note that we believe these are already
3 100 count. And then the final one here is oxycodone and
4 oxycodone combination products with a note, we believe
5 already 100 count.

6 Do you see those?

7 A. Yes.

8 Q. Can you explain what kinds of diversion issues
9 these drugs were causing?

10 A. These would be diversion issues at store level.

11 Q. What does that mean?

12 A. These would be identified as potential products
13 that could be diversion at a store by one of the employees
14 in a pharmacy.

15 Q. So there was an issue with each of these drugs
16 involving Albertsons' pharmacists diverting them; is that
17 correct?

18 A. I don't know if there's an issue with each drug.
19 These are the list of products that we were asked to see
20 if we could move to 100 count.

21 Q. Weren't you asking to see if they could be moved
22 to a hundred count?

23 A. Yes.

24 Q. Okay. Did you create this list?

25 A. I don't recall.

1 Q. Do you know how you became aware that these drugs
2 were causing diversion issues?

3 A. I don't recall.

4 Q. Were there certain geographic locations where
5 these issues were taking place?

6 A. It doesn't state that. No.

7 Q. You don't have any information that you can
8 recall?

9 A. Correct.

10 Q. Do you know when Albertsons first learned these
11 types of drugs were causing diversion issues?

12 A. I don't recall.

13 Q. Okay. How would moving these drugs to 100 count
14 bottles address the -- the diversion issues?

15 A. It was a request made by the business to move 100
16 count so they could track product easier, inventories,
17 physical inventories.

18 It required now you have to count hundred count
19 bottles to -- in some circumstances you can count
20 100-count bottles for an inventory as full bottle. Some
21 drugs have to be counted individually as required by DEA
22 as far as the quantities go.

23 Q. Okay. Do you know how big the bottles would have
24 been before being moved down to 100-count bottles?

25 A. I don't know.

1 Q. Okay. And if the hydrocodone combo products and
2 the oxycodone combo products, the last couple on the list
3 here, those are already at 100 count, do you know why
4 those are included on the list?

5 A. Just a quality control check, make certain that
6 we believe there's 100 count only today, at that time.

7 Q. Okay. And did Albertsons do anything other than
8 e-mail McKesson to address the diversion issues it saw
9 with these drugs?

10 MS. MILLER: Object to the form and foundation.

11 THE WITNESS: I don't know.

12 BY MR. LICHTER:

13 Q. Okay. Did Albertsons ever try to recall or take
14 back the Schedule II and III medications it pushed out to
15 pharmacies that the pharmacies didn't order?

16 A. At the closure of the Ponca facility?

17 Q. Yeah.

18 A. I don't believe so, no.

19 Q. Do you know if the diversion issues mentioned
20 here ever got resolved?

21 A. I don't know.

22 Q. Do you know if Albertsons still considers these
23 as having diversion issues?

24 MS. MILLER: Object to foundation.

25 THE WITNESS: I don't know.

1 BY MR. LICHTER:

2 Q. Have you ever had any role in Albertsons'
3 suspicious order monitoring system?

4 A. In the system itself?

5 Q. Yeah.

6 A. No.

7 Q. No.

8 Do you know if your procurement department ever
9 had a role in the suspicious order monitoring system?

10 A. Not to my knowledge, no.

11 Q. Okay.

12 MR. LICHTER: All right. I don't have any more
13 questions.

14 MS. MILLER: Okay. Can we take a quick break?

15 MR. LICHTER: Sure.

16 THE VIDEOGRAPHER: We are going off the record.

17 Time is 11:44.

18 (A recess was taken from 11:44 a.m. until
19 11:51 a.m.)

20 THE VIDEOGRAPHER: We are going back on the
21 record. The time is 11:51.

22 MS. MILLER: Okay.

23

24 (Next page, please.)

25

1

EXAMINATION

2 BY MS. MILLER:

3 Q. Mr. Johnson, just a couple of follow-up
4 questions.

5 You were asked at the beginning of the deposition
6 if there was any medication that might have -- that you
7 were taking currently that might impact your memory.

8 And I know there were a number of questions today
9 in which you didn't -- you didn't recall the answer to.
10 And so I just wanted to -- to clarify.

11 Are there any medical conditions that you have
12 had that might have impacted your memory, as you sit here
13 today?

14 A. Yes. [REDACTED]

15 [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED] [REDACTED]

21 Q. Okay. The -- have -- have you testified today --
22 as you sit here today, however, to the best of your memory
23 and recollection?

24 A. Yes.

25 Q. Okay. You were asked some questions about cut

1 orders versus suspicious orders.

2 Do you recall providing testimony about that
3 today?

4 A. Yes.

5 Q. And you testified about a process that there
6 would be -- if there were questions about an order, that
7 procurement would go follow up with field ops and you
8 mentioned compliance might -- is listed as having -- doing
9 some tracking and investigation of orders.

10 Do you recall that?

11 A. Yes.

12 Q. Do you have any independent recollection of after
13 those investigations, either by procurement or compliance,
14 do you have any independent recollection of an order being
15 determined by Albertsons as suspicious for purposes of
16 reporting to the DEA?

17 A. I do not.

18 MS. MILLER: Those are all the questions I've
19 got.

20 MR. LICHTER: I just have a couple follow-ups.

21

22 FURTHER EXAMINATION

23 BY MR. LICHTER:

24 Q. [REDACTED]
25 [REDACTED].

1 A. Me too.

2 Q. You said it does affect your memory; is that
3 correct?

4 A. Yes.

5 Q. And I know throughout this deposition there were
6 a lot of "I don't recall," "I don't know" responses.

7 Is that fair to say?

8 A. Yes.

9 Q. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 A. [REDACTED]

13 Q. [REDACTED], that wouldn't
14 necessarily have an impact on your -- your present
15 opinions about any of the documents that we've looked at
16 today or any of the points we've discussed today; correct?

17 A. Correct.

18 Q. Okay. And you're -- you're a trained, licensed
19 pharmacist; right?

20 A. Yes.

21 Q. And I think you mentioned that you're licensed --
22 a licensed pharmacist in two states: Arizona and North
23 Dakota?

24 A. Yes.

25 Q. Correct?

1 And so you've -- you've been trained in the
2 practice of pharmacy. You've been trained in the
3 dispensing of controlled substances; is that right?

4 A. Yes.

5 Q. Okay. And in the dispensing of opioids; is that
6 right?

7 A. Yes.

8 Q. Is it fair to say that you agree that compliance
9 with all state and federal laws regarding the
10 distribution, the dispensing of opioid medications is of
11 upmost importance?

12 A. Yes.

13 Q. Okay. Because opioid medications are dangerous;
14 correct?

15 MS. MILLER: Object to form.

16 THE WITNESS: Yes. They can be.

17 BY MR. LICHTER:

18 Q. Okay. And they can cause addiction; right?

19 MS. MILLER: Object to form.

20 THE WITNESS: Yes, they can.

21 BY MR. LICHTER:

22 Q. And so it's -- it's critically important for a
23 company like Albertsons that runs pharmacies throughout
24 the country to comply with every state, every federal law
25 and rule and regulation regarding opioid medications;

1 correct?

2 MS. MILLER: Object to form.

3 THE WITNESS: It is important for all companies
4 to comply with the state and federal regulations.

5 BY MR. LICHTER:

6 Q. Including Albertsons?

7 A. Including Albertsons.

8 Q. Right. And in your -- your time with Albertsons,
9 you spent many years as an employee of the company at
10 various different levels; correct?

11 A. Yes.

12 Q. Is your opinion that Albertsons at all times was
13 living up to the highest standard of compliance with
14 regards to how they were handling the distribution and
15 dispensing of opioid medications?

16 MS. MILLER: Object to form.

17 THE WITNESS: I don't know the answer to that
18 question because I have nothing to compare it to. I don't
19 know anybody else's suspicious order monitoring practice.
20 I only saw one -- one. That's all I saw.

21 BY MR. LICHTER:

22 Q. Well, you have your training as a pharmacist;
23 right? You went to school for a lot of years. You're --
24 you're licensed in multiple states.

25 I find it hard to believe that you don't have an

1 opinion just based on your educational background as to
2 whether or not Albertsons was living up to the highest
3 standard of care in the distribution and dispensing of
4 controlled substances?

5 MS. MILLER: Object to form.

6 THE WITNESS: The distribution is not part of my
7 responsibility.

8 So, as a pharmacist, it would be my
9 responsibility in dispensing medications appropriately for
10 legitimate medical use.

11 BY MR. LICHTER:

12 Q. You did, though, have a window as to what
13 Albertsons was doing regarding the distribution of
14 controlled substances; correct?

15 A. Yes.

16 MS. MILLER: Object to form.

17 BY MR. LICHTER:

18 Q. You're on documents where you describe the
19 suspicious order monitoring system to Albertsons' opioid
20 suppliers; right?

21 A. Yes.

22 Q. We looked at documents where I think specifically
23 Tom Napoli, you are summarizing the step-by-step process
24 of Albertsons' suspicious order monitoring system;
25 correct?

1 A. I shared the process. I wouldn't -- this -- I
2 did not develop the process.

3 Q. Sure. You shared the process.

4 And as a trained licensed pharmacist, you --
5 you're aware, and it's consistent with your educational
6 background, that the handling of controlled substances
7 including the distribution requires the upmost standard of
8 care because of how dangerous opioids are; correct?

9 MS. MILLER: Object to form.

10 THE WITNESS: For -- again, I'll go back to the
11 fact of my experience as a pharmacist only. I don't know
12 the responsibility of the warehouse and distribution. I
13 was focused on inbound product from suppliers to -- to
14 Ponca.

15 I don't know what the perfect scenario would look
16 like. I don't have a visual on that.

17 BY MR. LICHTER:

18 Q. And, sitting here today, you can't say even
19 though you're a licensed pharmacist in multiple states,
20 you actually have no opinion on Albertsons' distribution
21 practices regarding opioids, whether or not it was safe,
22 whether or not it was being dealt with with the highest
23 level of care? No opinion at all?

24 A. No, that's --

25 MS. MILLER: Object to form.

1 THE WITNESS: -- that's not true.

2 I was very hopeful as a business that we were
3 making the right progress on a suspicious order monitoring
4 system. Absolutely.

5 BY MR. LICHTER:

6 Q. Hopeful. Sure.

7 Did -- did Albertsons for all the times you had
8 insight into its SOMS program, did it live up to that
9 hope?

10 MS. MILLER: Object to form.

11 THE WITNESS: I don't know what the end game goal
12 was. I don't know the answer to that question.

13 You always try to have continuous improvement. I
14 think Albertsons always strived for continuous
15 improvement. I don't know if they ever got there. I
16 don't know.

17 BY MR. LICHTER:

18 Q. Okay. And in the dispensing context, is -- is
19 that -- I would assume you have a different answer based
20 on your position that as a licensed pharmacist your
21 concern was more on the dispensing side?

22 A. Correct.

23 Q. Okay. Is it your opinion that at all times
24 Albertsons' opioid dispensing practices lived up to the
25 highest level of care that it could have?

1 MS. MILLER: Object to form and foundation.

2 THE WITNESS: The actual dispensing is based on
3 each pharmacist's decisionmaking at the time of
4 dispensing.

5 BY MR. LICHTER:

6 Q. I'm asking as far as Albertsons' policies and
7 procedures, as to the rules that they had their
8 pharmacists operating under.

9 Do you think -- is it your opinion, sitting here
10 today, that Albertsons always set the highest standard of
11 care for its pharmacists to operate under regarding the
12 dispensing of opioids?

13 A. I sure hope so.

14 Q. I'm not asking if you hope so; I'm asking if you
15 think that -- did it always live up to that standard of
16 care?

17 A. I didn't do any dispensing as an Albertsons
18 pharmacist.

19 Q. Okay. But you did -- you were a district
20 pharmacy manager --

21 A. Yes.

22 Q. -- and you oversaw pharmacists?

23 A. Yes.

24 Q. So you -- you were familiar with the policies and
25 procedures they were operating under?

1 A. Yes.

2 Q. You knew the -- the issues and difficulties they
3 faced as they worked under your care and purview; correct?

4 MS. MILLER: Object to form.

5 THE WITNESS: Correct.

6 BY MR. LICHTER:

7 Q. So is it your opinion -- is it your position that
8 Albertsons, as a company, always and consistently guided
9 and helped its pharmacists with the highest standard of
10 care in how they were dispensing opioid prescriptions?

11 MS. MILLER: Object to form. Foundation.

12 THE WITNESS: I believe the policies and
13 procedures for the business would speak to that, which I
14 didn't write. But I'm hoping so, yes.

15 BY MR. LICHTER:

16 Q. So, yes, you do think that they consistently
17 lived up to that standard?

18 A. I think they tried every -- at all instances to
19 live up to that standard, yes.

20 Q. Okay.

21 MR. LICHTER: I have no further questions, but I
22 did want to put on the record the point that we discussed.

23 MS. MILLER: Yep.

24 MR. LICHTER: If that's okay.

25 Just for the record, my office for the plaintiff

1 has not yet received the personnel file for Mr. Johnson,
2 even though that file was due at least 72 hours prior to
3 the start of the deposition.

4 Counsel for Albertsons has represented that they
5 intend on producing that personnel file to us as soon as
6 they have it, and we intend on keeping this deposition
7 open for the purpose of asking questions about that
8 personnel file once it is received.

9 MS. MILLER: Okay.

10 MR. LICHTER: And nothing further.

11 I don't know if we want to open it to counsel
12 that's on the phone.

13 Does anybody have any questions for Mr. Johnson?
14 (No response.)

15 MS. MILLER: I think that's a no.

16 MR. LICHTER: I think that's a no. So that's it.

17 THE VIDEOGRAPHER: All right. This concludes
18 today's deposition. We are going off -- we are going off
19 the record. The time is 12:02.

20 (The oral and videotaped deposition concluded at
21 12:02 p.m.)

22

23

24 (Signature was waived.)
SCOTT JOHNSON

25

1 CERTIFICATE

2

I, Kate E. Roundy, Registered Certified Shorthand
Reporter, do hereby certify that prior to the commencement
of the examination SCOTT JOHNSON was duly remotely sworn
by me to testify to the truth, the whole truth, and
nothing but the truth.

5

I DO FURTHER CERTIFY that the foregoing is a
verbatim transcript of the testimony as taken
stenographically by me at the time, place, and on the date
hereinbefore set forth, to the best of my ability.

8

I DO FURTHER CERTIFY that I am neither a relative
nor employee nor attorney nor counsel of any of the
parties to this action, and that I am neither a relative
nor employee of such attorney or counsel, and that I am
not financially interested in the action.

11

12

13 KATE E. ROUNDY
14 Certified Court Reporter
15 Registered Professional Reporter
16 Dated: June 21, 2023

17

18

19

20 PREPARED BY:

21 KATE E. ROUNDY, RPR
22 Arizona Certified Reporter
23 Certificate No. 50582

24

25